

## Considerations for Farmland easements, and Guidelines for public benefit.

There are two parts to every review: One, is the donation of an interest in real property a public benefit? Two, does the instrument maintain the public benefit in perpetuity?

### **Part one – the donation itself**

Given the One NC Naturally goal of conserving North Carolina's natural ecosystem functions and services, Conservation Tax Credit (CTC) projects (applications) should contribute to our State's "Green Infrastructure."

In terms of the donation itself, two things to look at/for in farmland preservation easements applying for Conservation tax Credit: First, that the donor should demonstrate that it is a working farming operation (e.g. a certified farm, either through FSA or NCDA, or part of a Voluntary Ag District); and second, that there is a conservation plan, and the plan is being followed. With deliberation, some consideration will be given to other properties that could fulfill agricultural purposes or demonstrate farmland benefits.

### **Part two – evaluation of instrument (e.g. conservation easement or conservation agreement, hereafter referred to as "easement")**

Easement purpose should be clear -- agricultural or resource conservation purpose of easement should be front and center. Defined management goals would help reviewer, as well. Examples below:

- Identify and protect ecologically sensitive areas, including wetlands and streams
- Maintain fullfunction of ecosystem components
- Maintain a sustainable flow of agricultural products
- Conserve renewable natural resources

Reviewer will look to see that easement states that there will be a conservation plan, and option provided for the recipient to review the plan. If it is not a NRCS plan, then other acceptable plan preparer. Example of statement in easement: "All farming operations shall be conducted in accordance with a conservation plan approved by the NRCS, its successors or assigns, that address: (1) soil and water conservation, (2) pest management, (3) nutrient management, (4) terrestrial and aquatic habitat protection and conservation, and (5) impervious surface/stormwater management. This plan shall be updated periodically, and in any event at the time the basic type of agricultural operation on the Property changes, or at the time ownership of the Property changes. Any conservation plan shall seek to retain and maintain the...( a scenic feature for historic protection, natural forested habitat, etc)...In the event that farming or grazing shall become unfeasible, up to eighty percent of existing open lands may be planted in trees and managed with the timber management provisions in the easement, or allowed to revert to natural habitat for wildlife, with some management component to maintain natural ecosystems or control invasive, exotic species."

Other things reviewers are looking for include: explicit mention of the importance of protection of prime and important farmland soils; connection to "nodes" or communities

that support farming; that livestock are excluded from waterways; monitoring for impacts from surface water and groundwater withdrawal, overgrazing, etc; and, that retained rights are balanced with meaningful resource protection. Grantee should have some review of plans prior to exercising retained rights that would result in significant changes to farmland.

Subdivision -- defined as dividing a large farm into smaller farms -- may be suitable. In the interest of resource protection, reserved homesites and other retained development rights will be scrutinized closely. Questions have been raised about the viability of farming operations with reserved homesites. In general, reviewers are looking at the cumulative impact from retained rights. See NC Conservation Tax Credit website for approach to homesite review.

In regard to lands not in production at time of review. In general, reviewers struggle ascertaining how public benefit of a donation will be conserved in perpetuity where instrument allows conversion (e.g. reserved rights allow conversion of existing high-quality wildlife habitats to agricultural or horticultural purposes, or conversion of existing farmland to houses and swimming pools). Specific to farmland, areas of easement that are presently undeveloped for agriculture (e.g. natural forested areas), should be inventoried prior to action to develop these areas. For example, an easement could contain language such as “Any new structures or improvements, or other land-disturbing activities located in the conserved area (i) shall be set back not less than \_\_\_ feet from the bank of the stream, (ii) located at least \_\_\_ feet from any plant or natural community ranked G1, G2, G3, S1 or S2 by the North Carolina Natural Heritage Program’s ranking system, (iii) located at least \_\_\_\_\_ feet from habitat utilized by priority species identified by the NC Wildlife Resources Commission (e.g. the Wildlife Action Plan Priority Species or Partners in Flight (PIF) species of High or Extremely High Conservation Concern), (iv) located, to the extent practicable, to avoid disturbance to significant archaeological resources (v) located, to the extent practicable, to avoid disturbance to other conservation values of the Property, and (vi) must meet all applicable state and local regulations. Grantor, at its expense, shall have conducted a biological inventory of the site to be converted during the growing season, by an ecologist or botanist approved by the Grantee. A written report of the inventory shall be submitted to the Grantee. The Department of Cultural Resources should also be consulted about identified significant archaeological resources.” If nature of farming operation is changed, or additional lands are to be brought into production, conversion would require update of conservation plan, and these considerations should be addressed in the plan. The appropriate buffer distances explicit in the easement should be determined on-site, considering landscape context and watershed activities, and appropriate for the region/county.

The next step in farmland preservation will be to come up with measurable performance expectations, with defined components of a farm management plan. The strongest require approval of the management plan by the easement holder, which many land trusts already do.